

## REMARKS

### A. Interview

On 1 March 2010, a personal interview took place at the US Patent & Trademark Office between Jon Gordon, representing the applicants, and examiner Paul Chin. During the interview, the applicants' representative discussed the operation of the gripper mechanism, as the specification describes, and related this description to the claims. The differences between the gripper mechanism, as claimed, and the cited references were also discussed.

No agreement was reached regarding the allowability of any claim or subject matter.

The examiner is thanked for his time and attention.

### B. Amendment

Claim 9 has been amended to clarify the arrangement of the gripper elements and to incorporate the limitations of claim 11. Claim 11 has been cancelled. Claims 9–10 and 12–15 are to remain pending following entry of this amendment.

### C. 35 U.S.C. § 112, ¶ 1

In the Office action of 7 October 2009 (the “Office Action”), the examiner rejects claims 11 and 12 under the first paragraph of 35 U.S.C. § 112, asserting that these claims fail to comply with the written description requirement. (Office Action at 2.) Specifically, the examiner notes that claim 9 recites that “pouches are picked up with a gripper mechanism,” and that claims 11 and 12 add new methods of picking up that involve movable elements. *Id.* The examiner asserts that the positioning and/or movement of the elements in claims 11 and 12 are not clear in view of the specification. *Id.*

The Specification clearly describes at least two different kinds of movement. Referring to Figure 4, the depicted gripper mechanism 20 includes a gripper carrier 25, from which a row of gripper elements 22 project. (Specification p. 3, line 25–p. 4, line

1.) In a first kind of movement, the mechanism 20 as a unit may move linearly in the direction indicated by the arrow 26. (Specification p. 4, lines 6–7.) As the Specification describes:

[T]he bottom sides 14 of the pouches are directed towards the gripper mechanism 20. From the bottom side, the gripper elements 22 initially move past the corner (pointing to the top right in Figure 4) between the bottom side and the longitudinal side and then over or alongside the upwardly standing longitudinal side 13 can be engaged.

(Specification p. 4, lines 10–15.)

This first kind of movement is reflected, e.g., in the recital in claim 9: “wherein the gripper elements are moved in a parallel path between adjacent upper longitudinal sides of adjacent pouches, in a longitudinal direction of the upper longitudinal sides, from the bottom side of the pouches.” It will be appreciated that this first kind of movement may thread the respective upper longitudinal sides of the pouches between, e.g., respective pairs of gripper elements. (Specification p. 2, lines 3–4; p. 4, lines 1–5.)

After a movement of the first kind, the second kind of movement may take place, by which the gripper elements grip or grasp the pouches. (Specification p. 2, lines 16–19; p. 4, lines 3–5, 11–15.) This second kind of movement is reflected, e.g., by the recital in claim 9, as amended herein: “wherein picking up each pouch comprises gripping the upper longitudinal side of the pouch between gripper elements, at least one of which is movable or comprises a movable element.”

This gripping may be achieved, e.g., by the movement of one gripper element towards another as indicated by the arrows 28 in Figure 4. (Specification p. 4, lines 1–3.) Alternatively, as Figure 5 depicts, some or all of the gripper elements 22 may comprise pistons 30 capable of being projected, e.g., out of the gripper elements 22 towards the longitudinal sides 13 of the pouches 10, in the direction of the arrows 32, thereby gripping the upper longitudinal sides 13 of the pouches 10 between pairs of opposing pistons 30. (Specification p. 4, lines 3–5.) This second kind of movement may be driven

and/or the grip upon the pouches may be maintained, e.g., by a force exerted by compressed air. (Specification p. 4, lines 1–3.)

For the foregoing reasons, it is respectfully submitted that the Specification provides an adequate written description of the invention as claimed, and reconsideration and withdrawal of this rejection are therefore respectfully requested.

**D. 35 U.S.C. § 112, ¶ 2**

In the Office Action, the examiner rejects claims 9–15 under the second paragraph of 35 U.S.C. § 112, asserting that these claims are indefinite for failing to particularly point out and distinctly claim the subject matter that the applicants regard as their invention. (Office Action at 2.) Specifically, the examiner asserts that the recitation of “finger-like gripper elements that are arranged in a comb-like manner” in independent claim 9 is unclear. *Id.* It is respectfully submitted, however, that this rejection is moot in view of the amendment to claim 9 herein, and reconsideration and withdrawal of the rejection are therefore respectfully requested.

**E. 35 U.S.C. § 102(b)**

The examiner rejects claims 9 and 11–15 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent 3,954,165 to Snyder. (Office Action at 4.) The rejection is traversed, and reconsideration and withdrawal of the rejection are respectfully requested in view of the following.

Snyder discusses an automatic collating machine that is particularly adapted for packaging ice cream sandwiches that comprise soft, only partially frozen ice cream between two wafers. (Col. 4, lines 4–12.) As discussed in Snyder, items are fed from a conveyor belt onto carriers, lifted by the carriers, and then pushed by pusher elements into containers. (Col. 1, line 50–col. 2, line 6.)

Snyder discusses the carrier elevating the articles (*id.*), but the carrier is not a gripper mechanism or a finger-like gripper element, which is what claim 9 claims. Fig. 1 of Snyder clearly shows space between each article and the carrier above it, which is

inconsistent with the carrier or carriers being a gripper. Moreover, the articles merely rest on the carriers, and gravity, not gripping between elements, keeps them there.

The examiner asserts in the Office Action that the L-shaped retaining elements (Fig. 5, no. 72) of Snyder are the grippers of claim 9. (Office Action at 4.) But, contrary to claim 9, these elements are not substantially parallel to one another and do not project substantially perpendicularly from a gripper carrier, nor do they move in a parallel path between adjacent upper longitudinal sides of adjacent pouches. According to Snyder, they merely hold an article still on the pivotal plate of the carrier feed station until a new carrier is moved to the feed position. (Col. 5, line 58–col. 6, line 5.) The pivotal plate, not the retaining elements, supports the article against gravity. (Id.; Fig. 5.)

For the foregoing reasons, it is respectfully submitted that Snyder does not anticipate claim 9 and that claim 9 is therefore allowable over Snyder. Claims 12–15 each depend directly or indirectly upon claim 9, and it is therefore submitted that these claims are allowable over Snyder based on their inclusion of allowable subject matter.

#### F. 35 U.S.C. § 103

The examiner rejects claims 9–11 and 13–15 under 35 U.S.C. § 103 as obvious over U.S. Patent 4,768,642 to Hunter in view of U.S. Patent 3,822,528 to Carlsson *et al.* (Office Action at 4–5.) The rejection is traversed, and reconsideration and withdrawal of the rejection are respectfully requested in view of the following.

It is respectfully submitted that a *prima facie* case of obviousness cannot be made, in part because Hunter and Carlsson, alone and in combination, fail to teach or suggest all claim limitations. Specifically, neither Hunter nor Carlsson teaches or suggests a gripper mechanism having finger-like gripper elements, such as claim 9 claims. Nor does either reference teach or suggest gripper elements that are movable to pick up articles as claim 9 claims.

The examiner does not suggest that Carlsson provides either limitation, and the applicants respectfully submit that Carlson in fact does not teach or suggest them.

Hunter discusses a system of conveyor belts that may handle individually packaged items that may be compressed before being packed in a larger container. (Col.

2, lines 12–14; col. 2, line 66–col. 3, line 2.) The belt includes “material handling devices,” between which articles may be compressed. (Col. 3, lines 8–11.) But it is apparent from Figs. 1–5 of Hunter that the material handling devices are not finger-like, as in claim 9, nor are any material handling devices in Hunter moved in a parallel path between articles. Further, no article in Hunter is gripped or picked up between such devices.

In the Office Action, the examiner asserts that Hunter discloses handling the articles by a gripper mechanism having finger-like grippers, citing items 26 and 28 of Figs. 1 and 1A. (Office Action at 5.) But the cited items in no way act as grippers as claim 9 claims. As discussed in Hunter, the prongs (26) push the articles. (Col. 3, lines 14–18.) Pushing and gripping are different activities, however, and a pusher and gripper are different objects. Nor are the prongs discussed in Hunter moved between adjacent upper longitudinal sides of adjacent pouches, as claim 9 claims.

For at least these reasons, the applicants respectfully submit that claim 9 is allowable over Hunter in view of Carlsson. Claims 10 and 13–15 depend directly or indirectly upon claim 9, and it is therefore submitted that these claims are also allowable over the cited references.

#### G. Closing

For the foregoing reasons, the applicants therefore respectfully request that the examiner withdraw all rejections and allow the claims. Since each dependent claim is also deemed to define an additional aspect of the invention, the individual reconsideration of the patentability of each on its own merits is respectfully requested even though, for reasons of brevity, such patentability is not separately argued herein. The applicant reserves the right to rely on and argue patentability of the subject matter of the dependent claims in this or another proceeding.

Also in the interests of brevity, this response does not comment on each and every comment made by the examiner in the Office Action. This should not be taken as acquiescence of the substance of those comments, and the applicant reserves the right to address such comments.

To expedite prosecution of this application, the examiner is invited to call the applicants' undersigned representative to discuss any issues relating to this application.

Respectfully submitted,

Date: 8 March 2010

/Jon E. Gordon/

Jon E. Gordon  
Reg. No. 55,217  
Frommer Lawrence & Haug LLP  
745 Fifth Avenue  
New York, New York 10151  
Tel : (212) 588-0800  
Fax: (212) 588-0500